IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 502 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVUBHA TEJUBHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 502 of 2001

MRS DT SHAH for Petitioner No. 1

MS ROHINI ACHARYA, AGP for Respondents No. 1-6

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 06/10/2001

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution, the petitioner has prayed for appropriate writ, order or direction to the effect that the impugned

order dated 30.12.2000 (Annex.I) and the letter dated 6.1.2001 (Annex.H) should be quashed and set aside and respondents should also be directed to grant pension to the petitioner from 1.1.1991 with all other conseqential benefits including arrears amount with interest at the rate of 18%.

2. I have seen earlier order passed by this Court (Coram : R.R. Tripathi,J) on 5.5.2000 while dealing with Spl.Civil Application No. 9242/98. I would like to quote contents para-6 of the aforesaid decision for the purpose :-

" Now the question does arise for the consideration of this court whether the petitioners should be awarded interest on the amount of retirementary benefits ultimately found payable to them by the respondents. This Court has considered this aspect and found that as per the resolution of the State Government dated 17th October,1988 the services rendered by the daily weagers subject to the condition provided therein are countable toweards qualifying services. It is really unfortunate that merely because earlier to this resolution the petitioners have been taken in workcharge services they cannot be deprived of the benefits which are accrued to the daily wagers under resolution dated 17th October,1988. In case such an interpretation given to the resolution of 17th October,1988 is sought to be pressed by the learned counsel for the respondents then certainly it will make discrimination more precisely a hostile discrimination without there being any basis for the same. Those daily wagers who could not come in the workcharge establishment before 17th October, 1988 they will be benefitted for all these benefits as given out under the said resolution but not those daily wagers who have come in the workcharged establishment earlier to this resolution. The sum and substance of this resolution is that the daily wages service subject to the conditions laid down therein are countable towards the qualifying services or pension and if the daily wages services of the petitioners is of that quality and requirement as what it is contemplated under the said resolution, the same cannot be excluded from consideration and counted towards the qualifying services of the pension. If such an interpretation is given to this resolution then

> certainly it will be contrary or unconditional as being violative of Articles 14 & 21 of the Constitution. These petitioners are the low paid employees and though otherwise they were entitled for pension, gratuity and other retirementary benefits as per the resolution of 17th October,1988, very arbitrary approach has been taken by none other than the officers and functionaries of a welfare State, which resulted in deprival of monetary benefits to thesepersons. It is not unknown that the retirees from the Government services are keeping their amount which they receive towards their retirementary benefits in the fix term deposits or invests in some other benefits scheme so that they get the monthly return and from pension and this monthly return they may be able to meet out the expenses of bare necessities of life. Looking to the facts of this case as wlel as the underlying object, purpose and intention of the resolution dated 17th October, 1988 and the two decisions of this Court, reference of which has been made above, I consider it to be a fit case where the petitioners are to be given the interest on the amount of retirementary benefits for which they are found entitled. The respondents are directed to pay to the petitioners interest on the retirement dues as found payable to them at the rate of 12% from the dte of filing of these Special Civil Applications i.e. in Special Civil Application No. 3243/96 with effect from 30th April, 1996 and in Spl. C.A. No. 3382/96 w.e.f. 2nd May, 1996 respectively."

3. The above decision is based on the verdict of this Court (Coram : K.G. Balakrishnan & J.M. Panchal, JJ) in L.P.A. No. 1494 of 1997 decided on 6.8.1998 wherein this Court has considered all relevant aspects.

4. The petitioner was employed by respondent no.2 and was working under respondent No.3 since 1970. He was initially appointed as Work Charge employee vide order dated 7.1.1987 and he came to be retired on 30.11.1996 on reaching the age of superannuation. Since the petitioner was not paid pensionary benefits, he filed above-referred Spl.C.A.No. 9242/98 which came to be allowed by the judgment dated 5.5.2000 directing the respondents to consider the case of the petitioner in view of the judgment rendered in L.P.A. No. 1494/97. However, as per affidavit, the respondents have neither considered the observations and directions of the Hon'ble Court in

the aforesaid orders nor have considered the case of the petitioner and instead, vide impugned order, rejected the case of the petitioner for grant of pensionary benefits, though the petitioner is entitled to pensionary benefits as per the Government Policy laid down vide Govt. Resolution Nos. WCE-1588(5)/(3)/G-2 dated 17.10.1988 and No.FAS/5575/(45) dated 6.7.1990.

5. In the instant case, though Rule was issued on 4.4.2001 directing the respondents to file affidavit-in-reply on or before 12.6.2001, it transpires that no such affidavit is filed till today.

6. This court has appreciated the simliar type of facts/issues in number of deisions. One such decision of this Court is in the case of Ganguben, wd/o deceased Chimanbhai Jadav v/s State of Gujarat (Coram: C.K. Buch,J) in Spl.C.A. No. 2265/2001 dated 27.8.2001. In response to the query raised by the Court, ld. AGP Ms. Acharya has accepted that the facts of this case are similar to the facts of the aforesaid decision. It has been rightly submitted by Mrs. Shah that ratio propounded by this Court (Coram : K.R.Vyas,J) in the case of Karshanbhai Vastabhai Bhasker v/s State of Gujarat & Anr. reported in 1999(1) GCD 638 (Guj) would also squarely apply to the facts of the present case and hence the petitoner is entitled to the pensionary benefits. I am in agreeemnt with the submission of ld. counsel Mrs. Shah for the petitioner and applying the ratio propounded in the case of Karshanbhai (supra). By adopting the reasons assigned by this Court in the aforesaid decision, I am inclined to allow thispetition.

7. For the reasons aforesaid, petition is allowed. The impugned order dated 30.12.2000 (Annex.I) as well as comminicating letter dated 6.1.2001 (Annex.H) passed by respondent no.3 herein, are hereby quashed and set aside. Respondents are directed to compute and pay the pension to the petitioner Devubha Tejubha as per the Pension Scheme considering the services of the petitioner rendered by him as a Daily Wager - Work Charge Employee from the date of his retirement i.e. 1.12.1996 with arrears & with interest at the rate of 12% p.a. as per rules & regulations on such amount, at the earliest and preferably within 4 (four) months from today and shall continue to pay pension to the petitioner regularly. It will be open for the Respondents to clear up accumulated arrears with interest within 12 (twelve) months from the date of grant of pensionary benefit to the petitoner.

8. Rule is made absolute accordingly. No order as

to costs.

6.10.2001 [C.K. BUCH, J]
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